

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Notice of Proposed Rulemaking, FCC 04-66, MD Docket No. 04-73, 2004 WL 602818 (rel. March 29, 2004), Attachment A, Initial Regulatory Flexibility Analysis.

very small cable operators. To address the special circumstances of small cable companies, ACA proposes the following:

- Cable companies serving in the aggregate 1,000 or fewer subscribers should be exempt from regulatory fee payments.
- Cable operators exempt from paying regulatory fees should also be exempt from filing an annual Form 159.
- Many small, rural cable operators do not utilize the FCC's electronic form of payment, and instead rely on the U.S. mail. Therefore, regulatory fee payments should not be deemed late and subject to a 25% late penalty if postmarked on or before the FCC's deadline.

American Cable Association. ACA represents 1,000 cable companies that serve about 8 million cable subscribers. Many ACA members are small or family-run cable systems. About half of ACA's members serve fewer than 1,000 subscribers. ACA members face special challenges building, operating, and upgrading broadband networks in smaller markets and rural areas.

For many smaller companies, compliance with the numerous filings and fees imposed under FCC rules and regulations results in substantial administrative burdens and costs. One such filing are annual regulatory fee payments. ACA's Comments provide the Commission with suggestions on how to ease some of the burdens associated with the payment of regulatory fee payments for many very small cable companies.

II. Relief Requested

- A. Cable operators serving in the aggregate 1,000 or fewer subscribers should be exempt from paying annual regulatory fees and filing a Form 159.**

In the NPRM, the Commission proposes that cable operators serving in the aggregate less than 250 basic service subscribers should be exempt from regulatory

fee payments.² ACA supports the Commission's efforts to ease the burden of regulatory fee payments for smaller companies. To provide maximum relief to companies that most need it and to do so at a minimum cost, ACA suggests increasing the threshold from 250 to 1,000 subscribers.

Extending the threshold to 1,000 subscribers would have the following results: (a) it will provide some of the smallest cable operators with much-needed regulatory and administrative relief; and (b) the relief will not dramatically hinder the Commission's efforts to recover costs associated with the Commission's important activities. Moreover, this exemption would more equitably distribute regulatory fee payments to larger companies that absorb far more Commission resources.

B. Cable operators exempt from filing regulatory fees should also be exempt from filing an annual Form 159.

The NPRM proposes that small cable companies exempt from regulatory fee payments still must annually file FCC Form 159.³ We suggest that this approach would impose unnecessary paperwork obligations on the small cable companies and the Commission. Instead, small cable companies that fall under the 1,000 subscriber threshold should also be exempt from filing Form 159. To provide a means to verify compliance, a better approach would be a requirement to maintain records to support exempt status. All cable operators maintain these records for billing and for paying programming fees, so no additional paperwork would result. In any year that a company exceeds the threshold, the company would then be obligated to file and pay.

² NPRM at ¶ 26.

³ NPRM at ¶ 16.

- C. Many small, rural operators do not utilize the FCC’s electronic form of payment, and instead rely on the US mail. Therefore, regulatory fee payments should not be deemed late and subject to a 25% late penalty if it is postmarked on or before the FCC’s deadline.**

While ACA members are active in rolling out broadband in underserved, rural areas, the job is not complete. Some small cable operators do not themselves use the Internet for tasks that to others may seem routine. It is important that the Commission consider this reality and tailor its rules appropriately. For this reason, regulatory fee payments should not be deemed late and subject to a 25% late penalty if it is postmarked on or before the FCC’s deadline.

III. The Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires the Commission in its initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities.⁴ The IRFA must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objective of the statute and that would minimize any significant economic impact of the proposed rule on small entities.⁵ An example of an alternative includes an “exemption from coverage of the rule, or any part thereof, for such small entities.”⁶

The Commission has a statutory obligation to consider the impact any Commission action would have on small entities. Economic realities require the Commission to establish an alternative treatment for small cable companies. Because of the impact on small cable as discussed above and in ACA’s

⁴ 5 USC § 603(a).

⁵ 5 USC § 603(c).

Comments, the Commission must address these issues and include a comprehensive discussion of the impact its actions will have on small cable in its Final Regulatory Flexibility Analysis.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: _____ */s/* _____

Matthew M. Polka
President
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Christopher C. Cinnamon
Emily A. Denney
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Attorneys for the American Cable
Association

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⁶ 5 USC § 603(c)(4).